

COMMONWEALTH OF VIRGINIA  
Circuit Court for Loudoun County

CARLOS GRANADOS,

Plaintiff

v.

Case No. 93877

BANK OF AMERICA, N.A.  
100 North Tryon Street  
Charlotte, NC 28255

SERVICE: The Corporation  
Trust Incorporated  
351 West Camden St.  
Baltimore, MD 21201

SHELLPOINT MORTGAGE  
SERVICING

NEW PENN FINANCIAL, LLC  
STE 200

4000 CHEMICAL RD.

Plymouth Meeting, PA 19462

SERVICE: SHELLPOINT  
MORTGAGE SERVICING  
STE. 200

400 Chemical Rd.

Plymouth Meeting, MD 19462

and Does 1 to 100, inclusive

Defendants.

2015 MAY -8 PM 3:51

FILED

EXHIBIT 1

Granados vs Shellpoint

**COMPLAINT**

Plaintiffs named herein, pursuant to Va. Sup. Ct. R. 3:2 and Va. Code Ann. § 8.01-15.1A, submits this Complaint against Defendant named, as follows:

**PARTIES**

1. Plaintiff are residents and citizens of Loudoun, Virginia residing at 22837 ZION CHAPEL DR ASHBURN VA 20148. The real property and the contract the subject of this action is sited in and all acts occurred the same city and state.

2. Defendant SHELLPOINT MORTGAGE [hereafter "SEL"] is sited in, domiciled and does business in the Commonwealth of Virginia at all times.

3. Defendant Bank of America NA [hereafter "BOA"] investor of this loan is sited in, domiciled and does business in the Commonwealth of Virginia at all times.

4. Defendant Does 1-20 are unnamed potential parties who may be joined and sued upon discovery of their true names and capacities. Plaintiff reserves the right to amend her complaint to reflect the true names and capacities when same are ascertained.

5. Any reference herein to Does is to an unidentified persons or entity yet to be named by amendment or similar means under Va. Codes.

**VENUE AND JURISDICTION**

6. This Court has jurisdiction over all parties because they are Virginia citizens, have minimum contacts with or do business within this court's jurisdiction.

7. Venue is appropriately within in the Circuit Court of Fairfax County pursuant to Va. Code Ann. § 8.01-262, because the real property is located therein and the events, torts and contractual breaches giving rise to plaintiff's claims against all defendants occurred in the City of Fairfax, Va.

**FACTUAL ALLEGATIONS**

8. Plaintiffs are is by grant deed the property owner of real property located as pled above, by reason of a grant deed dated 31<sup>st</sup> day of May 2007.

1           9. Plaintiff allege that she obtained a loan from Bank of America [or] BOA, [its  
2 successor in interest] on 31<sup>st</sup> day of May 2007. The Note was in the sum of \$ 685,000.00  
3 Plaintiff's monthly payments commenced at the sum of \$ 3,929.92. He is not behind on any term  
4 of condition of the note payments or otherwise. Plaintiff believes that his Note may not be  
5 enforceable by BOA based on conflicting representations negligence predatory lending practices  
6 he has been receiving commencing in or about November, 2011. Plaintiff also alleges that if  
7 Selene Financial the holder in course does own the rights under the note, SEL has not properly  
8 accounted for the funds received and that he has been overcharged for amounts that are  
9 unenforceable as excessive, overstated, mis-accounted for and that SEL may intend on using  
10 these discrepancies to commence a foreclosure upon him illegally. As a result of the  
11 irregularities in his financial statements and from statements made to him by bank agents and  
12 employees, Plaintiffs allege that some or all of the terms of the Note that may be due is in some  
13 manner unenforceable because SEL and BOA has overcharged the account and has done so in  
14 the past. Such sums as penalties and interest due would not be enforceable under the terms of  
the Note to which he agreed.

15           10. Plaintiffs seek the judicial determination of the true and correct monies owed, paid  
16 and yet possibly due by declaration and judgment so as to quiet the issue once and for all time.  
17 The balance of this action seeks remedies allowed under the law in damages and equitable relief  
18 as pled.

#### 19                           **FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF <sup>1</sup>**

20           11. Plaintiffs re-alleges and incorporates the allegations contained in the preceding  
21 paragraphs, as though set forth at length herein.

22           12. Plaintiffs alleges that a real *case and controversy* has arisen between plaintiff and all  
23 defendants based on several allegations herein. Plaintiff alleges that at no time hereto, did any  
24 defendant or Doe herein hold the right to enforce the Note and Deed of Trust for the subject  
25 property. And if they did none has been forthright about the true sums paid and properly credited  
26

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27 <sup>1</sup> Under Federal statutes  
28

1 to his account. Nor has there been an accounting or acknowledgement of debt validation or pay  
2 off of the note plaintiff seeks to extinguish, *et al.* The matter is ripe for a declaratory relief order  
3 with findings and conclusions confirming the state of the facts leading to determination of rights  
4 and duties attendant.

5 13. Plaintiffs alleges that no defendant herein has legal *standing*. The receipt of loan  
6 payments does not independently establish such. Plaintiff asserts that the alleged security lien  
7 [deed of trust] may be void and the obligation a non-secured asset. Therefore, any claim of  
8 Defendants should be deemed *unsecured* and the Deed of Trust void, the note unsecured and/or  
9 satisfied.

10 14. Plaintiffs urges that in this cause, a declaration of rights and remedies should be forth  
11 coming after evidence is received sufficient to support a verdict or judgment against the  
12 defendants. It is necessary that this Court declare the actual rights and obligations of the parties  
13 and make a determination as to the validity, nature and extent of Defendants' interest in the  
14 Property and all parties' rights, duties and obligations.  
15

16  
17 **SECOND CAUSE OF ACTION FOR FRAUD AND DECEIT**

18 15. Plaintiff incorporate the content of the preceding allegations as though fully set forth  
19 consisting of the elements and special factual allegation sufficient to allege fraud.

20 16. Plaintiff was given facts and information about his loan from defendant and others  
21 and Does in formulating his Note.

22 17. Plaintiff alleges that the named Defendants and Does, inclusively, engaged in a  
23 pattern and practice of defrauding borrowers including Plaintiff. First the Note that was based  
24 on the Loan development itself was corrupted by the use of unapproved and non-loan industry  
25 criteria for the loan thus, causing plaintiff to pay more in up front fees, charges and assessments  
26 to "get" or obtain the loan than should have occurred. Also the fabrication of the note was  
27 machiavellian and predatory and designed to escalate the payments to \$5,266.83 after 10 years  
28 yet it escalated on or around November 2011.

1 Therefore this was a predatory loan designed to default at the borrower like a time bomb ready to  
2 reset change the terms with a new payment completely unaffordable at the year of 2011 and  
3 increase from \$3,929.92 to a higher amount, which in reality is exactly what happened given the  
4 impression that the borrower was at fault when the payment changed to \$ 5,266.82 making the  
5 borrower incapable to handle it.

6 Therefore this was a teaser mortgage payment with an undisclosed teaser rate just to deceive the  
7 borrower and make him believe that was amortizing his loan principal and interest and to  
8 unjustly enrich the holder of the note at the secondary market and in the sale of this as securities.  
9 which is consider a teaser rate much less lower than the fixed or adjustable rates. This will be  
10 shown by competent expert testimony and analysis. Secondly, the Note enforcement was flawed  
11 and etched in Fraud by other defendants by intentionally or recklessly stating that the loan was  
12 being properly serviced when it was not. The consequence? The Note was subject to and  
13 Plaintiff unknowingly paid excessive sums to be shown at trial for this plan and scheme to  
14 "overcharge" plaintiff by trickery, dishonest calculations and lack of proper crediting of sums  
15 paid causing the defendants to be unjustly enriched in sums greater that which were true and  
16 correct. Last, the plaintiff was deceived by lenders and servicers to believe his loan would be  
17 altered to terms beneficial when in fact the loan terms in the long run were over charged.

18 18. As to the "Servicing period Fraud" the following is alleged: The defendants also  
19 failed to properly credit payments made by plaintiff under the Note/Loan. There were also False  
20 Promises elicited to induce Plaintiff's reliance to his harm, to wit, Defendants also induced by  
21 deceit, plaintiff to stop paying his monthly loan payments for 3 months on the false offer  
22 that if he did this he could get a better loan. Such was untrue and known by defendants to  
23 be false when uttered. In this case at bar, the defendants WHILE THE LOAN WAS CURRENT  
24 represented that the plaintiff STOP paying on his loan so he could receive the "benefits of a loan  
25 modification or new loan." Plaintiff reasonably believed he "had" to do this to receive these  
26 benefits. Defendants in truth and fact never intended to accommodate plaintiff in this fashion  
27 and when plaintiff stopped paying to satisfy the false promise of defendants, they commenced a  
28 foreclosure. This was fraud by trick and devise and deception. Such is burdensome, oppressive,  
malicious and warrants punitive damages.

19 to 46. Reserved.

1           47.     The Defendants had actual knowledge that the Plaintiffs' account was current and  
2 accurate but deceptively treated same as not accurate so that they could use the inaccuracy to  
3 institute a foreclosure on the Subject Property. The foreclosing Defendants also utilized amounts  
4 known to the Defendants to be inaccurate to determine the amount allegedly due and owing for  
5 purposes of damaging plaintiff's credit and to institute a foreclosure proceeding.

6           48.     Additionally, the Defendants concealed material facts known to them regarding  
7 payments, notices, assignments, transfers, late fees and charges with the intent to defraud  
8 Plaintiffs for payment of excessive fees and charges to reinstate the loan and to foreclose.

9           49.     The Defendants made the above-referenced false representations, concealments  
10 and non-disclosures with knowledge of the falsity thereof, intending to induce Plaintiffs'  
11 reliance, which the unsuspecting Plaintiffs justifiably relied upon, resulting in damage to their  
12 credit standing, costs and potential threat of loss of their property. Plaintiffs were unaware of the  
13 true facts. Had Plaintiffs known the true facts, Plaintiffs, among other things, would not have  
14 maintained the Defendants as their lender, servicer and trustee (and their alleged agents) and/or  
15 would have taken legal action immediately to save their house.

16           50.     As a result of the Defendants' fraudulent conduct, Plaintiffs have suffered  
17 compensatory, general and special damages in an amount to proof. Additionally, the Defendants  
18 acted with malice, fraud and/or oppression and, thus, Plaintiffs are entitled to an award of  
19 punitive damages, general and special with statutory penalties and damages as appropriate.

### 20                           **THIRD CAUSE OF ACTION for NEGLIGENCE**

21           51.     Plaintiff incorporates herein by reference the allegations made above as though  
22 fully set forth herein

23           52.     At all times relevant herein, the Defendants, acting allegedly on information and  
24 belief as Plaintiffs' lender and loan servicer, trustee, had a duty to exercise reasonable care and  
25 skill to maintain proper and accurate loan records and to discharge and fulfill the other  
26 incidents attendant to the maintenance, accounting and servicing of loan records, including,  
27 but not limited, accurate crediting of payments made by Plaintiffs to avoid errors in accounting  
28 causing foreclosures, et al.



1 through 100 (collectively referred to herein as the "Title Defendants") as the Title Defendants  
2 hold themselves out as entitled to fee simple ownership of the Subject.

3 58. In fact, the Title Defendants have no right to title or interest in the Subject Property  
4 and no right to entertain any rights of ownership including the right to foreclosure, offering the  
5 Subject Property for sale at a trustee's sale, demanding possession or filing cases for unlawful  
6 detainer. .

7 59. Plaintiffs seek to quiet title as of the date of the filing of the Notice of Default.  
8 Plaintiff seeks a judicial declaration that the title to the Subject Property is vested in Plaintiffs  
9 alone and that the Defendants and each of them be declared to have no interest estate, right, title  
10 or interest in the subject property and that the Title Defendants, their agents and assigns, be  
11 forever enjoined from asserting any estate, right title or interest in the Subject Property subject to  
12 Plaintiffs' rights. Title should be cleared and vested in the name of the plaintiff herein.

### 13 **FIFTH CAUSE OF ACTION FOR AN ACCOUNTING**

14 60. Plaintiff incorporates herein by reference the allegations made above as though  
15 fully set forth herein.

16 61. Plaintiff has an account with the past and present beneficiary lender and loan  
17 servicer that must be kept accurate. Said duty succeeds the rights under the note and binds  
18 subsequent holders seeking enforcement after an alleged breach of the duty to pay.

19 62. Plaintiff believes that his account has been kept inaccurately by defendants  
20 responsible for such accounting. Such has injured and damaged the plaintiff.

21 63. Plaintiff seeks a judicial order requiring an accounting to reconcile and rectify the  
22 wrongful state of plaintiff's records and account and to determine his true financial record of debt  
23 owed, payments and credits given not yet done after request was made.

### 24 **SIXTH Cause of Action for Temporary Restraining Order and Preliminary Injunction to** 25 **Enjoin Threatened Foreclosure AND other Equitable Relief**

26 64. Plaintiff incorporates herein by reference the allegations made above as though fully  
27 set forth herein.  
28



1           **65. Plaintiff shall move this court for a temporary restraining order and then, Order to**  
2 **Show Cause for preliminary injunction for orders as follows:**

3           **A. Enjoining any foreclosure of property stated herein aka the address stated in these**  
4 **pleadings above, or in the alternative,**

5           **B. For shortened time for Discovery and taking depositions on 3 day's notice of critical**  
6 **witnesses who are persons most knowledgeable about this foreclosure event for use at the OSC**  
7 **hearing after the TRO hearing;**

8           **D. For OSC re to determine the true real parties in interest who is the true defendants**  
9 **with "standing" as a matter of law concerning each defendant appearing.**

10           **The Application will be based on another motion containing a Rule 65 Application,**  
11 **Authorities, Declarations, Exhibits, Declaration of statutory notice and oral argument proffered**  
12 **at the time of hearings, both TRO and OSC re preliminary injunction, thereafter.**

13                           **SEVENTH CAUSE OF ACTION for Violation of the Federal Debt**  
14                           **Collection Practices Act - 15 USC 1692g**

15           **66. Plaintiff incorporates here each and every allegation set forth above.**

16           **67. Plaintiff allege that all defendants jointly and severally within the past year have**  
17 **violated state and federal law aka FDCPA by illegal and improper acts, to wit, asking,**  
18 **demanding, soliciting, threatening and oppressively, wrongfully seeking for sums in payment of**  
19 **a debt not established nor proved and not due or validated by means prohibited by the language**  
20 **within the FDCPA, inclusively.**

21           **68. But for the breach, plaintiffs would not have been damaged. Plaintiff seeks damages**  
22 **in a sum to be proved at trial by reason thereof against all defendants and Does, including**  
23 **statutory damages, attorney's fees and costs. Plaintiffs are entitle under the statutory scheme to**  
24 **statutory penalties and attorney's fees and seek such.**

**PRAYER FOR RELIEF**

**Plaintiff prays for relief as follows:**

- 1. Actual damages, both general and special according to proof;**
- 2. Punitive damages in the maximum amount allowed by law, jointly and severally against all defendants, by way of punishment and example;**
- 3. An award of the attorneys' fees and costs incurred herein; and**
- 4. For orders reforming contracts to reflect the true intention of the parties, or relief of similar effect;**
- 5. For a declaratory relief judgment;**
- 6. For any equitable relief as may be plead or plead by amendment hereafter;**
- 7. Such other and further relief as the Court deems is just and appropriate.**

**JURY TRIAL IS DEMANDED**

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**Carlos Granados,  
Plaintiff in pro se**

**By: CARLOS GRANADOS,  
22837 ZION CHAPEL DR  
ASHBURN VA 20148.**

**Tel: \_\_\_\_\_  
E-Mail: \_\_\_\_\_**

**Plaintiff in pro se**

COMMONWEALTH OF VIRIGINA

IN THE COUNTY COURT OF LAW FOR LOUDOUN COUNTY

CARLOS GRANADOS,

Plaintiff,

v.

BANK OF AMERICA, N.A., and  
SHELLPOINT MORTGAGE SERVICING,

Defendants.

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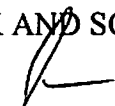
**NOTICE OF FILING NOTICE OF REMOVAL  
TO THE UNITED STATES DISTRICT COURT**

PLEASE TAKE NOTICE that the Notice of Removal of the above-captioned action from the County Court at Law for Loudoun County, Virginia to the United States District Court for the Eastern District of Virginia, Alexandria Division, a copy of which is attached hereto, was filed on June 12, 2015 with the Clerk in United States District Court for the Eastern District of Virginia, Alexandria Division.

Dated: June 15, 2015

Respectfully submitted,

BROCK AND SCOTT, PLLC

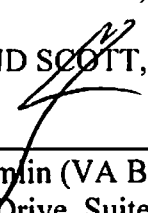
  
\_\_\_\_\_  
Jason L. Hamlin (VA Bar No. 4693)  
484 Viking Drive, Suite 203  
Virginia Beach, VA 23452  
(757) 213-2959 (Phone)  
(757) 16-6488 (Facsimile)  
[Jason.Hamlin@brockandscott.com](mailto:Jason.Hamlin@brockandscott.com)  
Attorneys for Defendants

**CERTIFICATE OF SERVICE**

I hereby certify that on June 15, 2015, that I served a true and correct copy of the NOTICE OF REMOVAL via First Class U.S. Mail to Carlos Granados, 22837 Zion Chapel Dr., Ashburn, VA 20148.

Respectfully submitted,

BROCK AND SCOTT, PLLC

  
\_\_\_\_\_  
Jason L. Hamlin (VA Bar No. 46951)  
484 Viking Drive, Suite 203  
Virginia Beach, VA 23452  
(757) 213-2959 (Phone)  
(757) 16-6488 (Facsimile)  
Jason.Hamlin@brockandscott.com  
Attorneys for Defendants